Reminder to Facilities of Their Obligation to Provide Accessible Services to People with Disabilities

July 31, 2013

Dear Administrator or CEO:

The New York State Department of Health (NYSDOH) is committed to ensuring our health care system provides services that are fully and equally accessible to persons with disabilities. Barriers to health care may exist in facilities of all sizes, including hospitals, community clinics, rehabilitation facilities, nursing homes, and private doctors' offices. The purpose of this letter is to remind facilities, including residential facilities and agencies, of their legal responsibilities to provide health care under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, New York State (NYS) Human Rights Law, and regulations promulgated under the New York State Public Health law. The NYSDOH advises all providers to evaluate their facilities' compliance with these laws and to develop a plan to become compliant, as needed to ensure that individuals with disabilities have full and equal access to programs and services.

Legal Mandate

Section 504 of the Rehabilitation Act of 1973 is a federal law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to organizations that receive financial assistance, directly or indirectly, from any Federal department or agency. These organizations include many hospitals, nursing homes, clinics, human service programs, and individual providers. Section 504 applies to all medical care providers who receive payments from Medicaid or Medicare (excluding Part B payments). Section 504 forbids excluding or denying individuals with disabilities an equal opportunity to receive services from applicable organizations.

The Americans with Disabilities Act (ADA) is a far-reaching civil rights law comprised of five titles. In relation to the provision of health care services, Titles II and III are of particular importance. Title II of the ADA covers state and local governments, including organizations providing services on their behalf, such as state and city hospitals and clinics, regardless of the receipt of federal funding. Title III of the ADA covers all "places of public accommodation." Places of public accommodation are places that are open to the public where an individual obtains goods and services and include, but are not limited to, private doctors' offices, hospitals and clinics, irrespective of the receipt of federal funds. Federal agencies, such as the Office for Civil Rights of the Department of Health and Human Services and the Department of Justice's Civil Rights Division, enforce these federal anti-discrimination laws as they relate to violations in health care settings.

Section 286.2 of the NYS Human Rights Law mirrors Title III of the ADA and covers full access at all places of public accommodation. Section 286.2 allows the consumer to file an independent action with the NYS Division of Human Rights. Local laws may also apply to health care providers and typically incorporate similar complaint mechanisms.

Health care providers in New York State are also subject to applicable Department of Health regulations that prohibit discrimination on the basis of disability (e.g., 10 NYCRR §§405.7(c) and 415.26(i)(1)(x)) and to construction and physical environment standards that incorporate the ADA (e.g., 10 NYCRR §711.2(c)).

In addition to complying with state and local building codes and NYSDOH construction and physical environment standards, facilities should adhere to the Department of Justice and the U.S. Access Board regulations and guidance directing access to care for people with disabilities. These materials can be found at www.ada.gov and www.access-board.gov respectively. For example, the Department of Justice has developed guidelines for medical care providers on access to medical care for people with physical disabilities.

New construction and renovation to existing facilities must comply with ADA access standards which can be viewed at https://www.access-board.gov/sitemap.html Facilities that are receiving funding to rebuild pursuant to damage incurred by Hurricane Sandy must ensure that reconstruction complies with these standards and review emerging federal guidance on access standards for medical diagnostic equipment at https://www.access-board.gov/sitemap.html

Ensuring Access to Health Care Services

As a health care provider you are required, by one or more of the above laws, to ensure that health services are fully accessible and equally provided to individuals with disabilities. As such, an individual with a disability must have access to the same health care services that someone without a disability receives.

Full and equal access to care can be achieved through the following means: 1) removing physical barriers, 2) providing "auxiliary aids and services," and 3) making reasonable changes to policies, practices and procedures.

Removal of Physical Barriers. Physical barriers can prevent people with disabilities from accessing health care. For example, people who use wheelchairs or scooters cannot access the building or the exam room when doorways and entrances are too narrow, exam/waiting rooms are too small or crowded with furniture, buildings have stairs and no ramps, or bathrooms have insufficient turning space. Existing facilities are required to remove architectural barriers where readily achievable. Barrier removal is readily achievable when it is accomplished without undue financial or administrative burden. Providers are responsible for altering or modifying waiting, exam, and changing rooms to ensure access by persons with a range of physical, sensory, and cognitive impairments. This can often be easily achieved by reconfiguring furniture or equipment and the use of appropriate signage. In other cases there may be need for more involved structural alterations.

Providers are also responsible for providing medical equipment that ensures an individual with a disability can receive the same health care services that someone without a disability receives. Accessible medical equipment includes but is not limited to adjustable examination tables and accessible weight scales (platform/roll-on scales). This also includes equipment, such as patient lifts, that will ensure the safe and comfortable transfer of patients to other equipment. Providers bear the responsibility of transferring patients to equipment when they are otherwise unable to do so independently and must not rely on the patient's family member, friend, or aide to assist.

Provision of Auxiliary Aids and Services. The provision of "auxiliary aids and services" typically refers to employing the means necessary to achieve effective

communication with individuals with sensory impairments (e.g. people who are deaf, blind, deaf-blind, hard of hearing, or have low vision). Examples of such aids and services include: qualified and appropriate sign language interpreters, video relay interpreting, passing notes, assistive listening devices, large print, Braille, e-mail or use of screen readers or other audio devices for communication of information.

The responsibility for the provision of auxiliary aids and services lies with the provider, including the cost of such accommodation, and may not be passed along to the patient. Providers must not rely on the patient's friends or family members to interpret or otherwise facilitate communication and must provide auxiliary aids and services in a timely manner. Providers may need to contract with one or more interpreter agencies in order to ensure that interpreters are available when needed.

Policies, Practices and Procedures. Health care providers must implement policies, practices or procedures to ensure full and equal access to health services.

It is essential that providers have intake processes in place that include a disability accommodations needs assessment. The disability accommodations needs assessment provides the patient the opportunity to identify and request reasonable accommodations. Through such intake processes, providers can, with input from the patient, determine appropriate accommodations necessary to ensure the effective delivery of health care services that meet the needs of each individual patient.

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It is also important that providers implement standardized, comprehensive disability competence training for all staff to ensure that individuals with disabilities do not experience discrimination in any aspect of the health care encounter. The training should include but not be limited to: ascertaining the need for accommodations; methods to ensure privacy during intake procedures; transfer and positioning techniques; and sensitivity and awareness of the needs of individuals with various disabilities, including intellectual disabilities. Staff should be trained to identify and locate which examination and procedure rooms are accessible, where accessible

equipment is stored and how to use it, as well as how to appropriately use transfer and positioning aids and equipment, such as patient lifts, gait belts and a variety of stabilizing supports, to position patients with disabilities during routine exams and procedures. Stabilizing supports, such Velcro straps, are often necessary to facilitate exams for individuals who experience spasticity, or who may not be able to maintain the exam position for the amount of time necessary, and are not to be considered "restraints."

Medical providers should develop procedures for evaluating compliance with accessibility standards on an ongoing basis. Providers should also inform patients of their rights in understandable formats and provide straightforward methods for receiving and resolving complaints.

The NYSDOH expects every medical provider to ensure that their health care services are fully and equally accessible to persons with disabilities. If you have any questions, please contact Ms. Joan Cleary Miron, MPH, Office of Primary Care, at (518) 473-7019 or Ms. Theresa Paeglow, Disability and Health Program at (518) 474-2018.

Sincerely yours,

Karen S. Westervelt
Deputy Commissioner
Offices of Primary Care and Health
Systems Management